IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 357 OF 1999

(1) Pooja D. Phadte,
resident of House
No.362, V. P.
Camurlim, Oxel,
Siolim, Bardez-Goa.

(2) Shri Dyaneshwar Raut
Dessai, resident of
House No.3, Assolda,
Chandor-Goa. ... Petitioners.

versus

(1) State of Goa,
through its Chief
Secretary, having
Office at Secretariat,
Panaji-Goa.

(2) The Director of Accounts,
Directorate of Accounts,
Government of Goa,
Panaji, Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Petitioners.

Mr. A. N. S. Nadkarni, Advocate General with Ms.Winnie Coutinho, Government Advocate for the Respondents.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 29TH JULY, 2003.

ORAL JUDGMENT(PER F.I.REBELLO, J.)

The Petitioners in the present Petition are holding the posts of Legal Assistants in the Secretariat.

They had applied pursuant to an advertisement inviting applications for the posts in the pay scale of Rs.1640-6--2600-EB-75-2900. They applied for the said posts, were selected and given an offer of appointment. On acceptance of the offer, the Petitioners were appointed to the posts of Legal Assistant in the Secretariat on a monthly pay of Rs.1640-60-2600-EB-75-2900 from the date of appointment or joining the posts. The Petitioners thereafter have been confirmed in the said posts by Order dated 19th May, 1999. The Petitioners continued to draw salary in the pay scale of Rs.1640-2900 until the implementation of the Fifth Central Pay Commission Recommendations.

2. It is the case of the Petitioners that the Respondents by Order dated 27th October, 1997, accepted the recommendations of the Fifth Central Pay Commission. In terms of the said recommendations, the salary of the incumbents in the pay scale of Rs.1640-2900 was to stand revised to Rs.5500-175-9000. It is the Petitioners case that Respondents effected pay fixation with reference to the pay scales of the Fourth Central Pay Commission existing as on 1st January, 1996 and not with reference to the revised/interim revised scales given by the Goa Government after 1st January, 1986. The Order of 27th October, 1997, stated that all revisions given for Secretariat and Non-Secretariat staff consequent upon

the implementation of the Fourth Pay Commission Report from 1st January, 1986 shall be ignored for the purpose of equation of pay scales as well as fixation of pay. The Petitioners pay scales consequent to the Order dated 27th October, 1997, has been fixed at Rs.4500/- in the pay scale of Rs.4500-125-7000 which corresponds to the pay scale of Rs.1350-2200 or Rs.1400-2300. The case of the Petitioners is that they were never appointed in the pay scale of Rs.1350-2200 or Rs.1400-2300. The Petitioners contend that they represented to the Government setting out therein the various grounds as are reflected in paragraph 9 of the Petition. The Petitioners contended that inspite of the Order of October, 1997, the Respondents have revised pay scales of some employees which have been referred to in the Petition. That is set out in paragraph 10 of the Petition. In paragraph 12, reference is made to the case of Shri Rahantulla Agha and Shri Diwan Rane, Senior Assistants in the Secretariat. It is contended that Shri Aga and Shri Rane were direct recruits in the pay scale of Rs.1640-2900. In terms of the Order dated 27th October, 1997, they were awarded salary in the pay scale of Rs.4500-7000. Upon making representations by Order dated 9th June, 1999, they were given pay scales of Rs.5500-9000 which was the corresponding pay scale which they were holding at the time of direct recruitment. It is, therefore, submitted that the case of the Petitioners

and Respondents are similarly situated and consequently the same yardstick should be applied to them. They cannot be discriminated. There are various other grounds raised which will not be adverted to in view of the Order to be passed. The Petitioners, therefore, pray that they be fixed in the pay scale fo Rs.5500-9000.

3. On behalf of the Respondents, an Affidavit has been filed by Dattaram Sardessai, Under Secretary(Finance) to the Government of Goa. Reference therein is made to the Affidavit filed in Writ Petition No.138/99, a copy of which is attached to the Affidavit. Leave is sought to rely on the averments made therein. For the reasons set out in the Affidavit of Dattaram Sardessai,Under Secretary(Finance) it is contended that the Petition should be dismissed. In the Affidavit of Dattaram Sardessai, Under Secretary(Finance) filed in Writ Petition No.138/1999, the Respondents have explained circumstances by which they have ignored the revisions as also interim relief given after the acceptance of the Fourth Central Pay Commission. The Respondents have also set out as to how the State Finances are likely to be expended if revision is given and that apart from 5000 Government employees who were benefited, the benefit will have to be given to another 4000 employees. The other averments have been rebutted and dealt with in Writ Petition No.138/1999 and, therefore, will not be adverted

to again in this Petition.

4. The short issue is whether the Petitioners are entitled to the revised pay scale of Rs.5500-9000. Reference may be made to the Order issued by the Government of Goa which is dated 27th October, 1997. By the said Order, while accepting the recommendations of the Fifth Central Pay Commission as accepted by Central Civil Services(Revised Pay) Rules, 1997, as notified on 30th September, 1997, by the Government of India, the Respondents decided to adopt the same and make applicable to the employees of Government of Goa w.e.f. 1st January, 1996 subject to the following conditions:-

(i) Pay fixation in the proposed scales shall be done with reference to pay/pay scales of the Fourth Pay Commission existing as on 1st January, 1996 and not with reference to the revised/interim revised scales given by Goa Government after 1st January,1986. It was further provided that all revisions for Secretariat and Non-Secretariat staff consequent upon implementation of Fourth Pay Commission Report from 1st January, 1986 shall be ignored for the purpose of equation of pay scales as well as fixation of pay. Option to retain old pay in the revised/interim pay scales given after 1st January, 1986 shall not be available.

In other words, this Order proceeds on a footing that an employee in the pay scale given based on the Fourth Pay Commission if was given a revision after that, that revision will be ignored for the purpose of implementing the revised pay scale. The revised pay scale for the post will correspond to the pay scale for the post as per the recommendation of the Fourth Pay Commission. In the instant case, the Petitioners herein were appointed on 14th October, 1996 and 18th October, 1996 by way of direct recruitment. The Petitioners were offered a pay scale of Rs.1640-60-2600-EB-75-2900. The corresponding pay scale for this post is Rs.5500-9000. In these circumstances, was it open to the Respondents to place the Petitioners in the pay scale of Rs.4500-7000? There is nothing before us to show what was the pre-revised pay scale after the Fourth Pay Commission and subsequent revision. At any rate, once the Respondents themselves accepted to adopt the recommendation of the Fifth Pay Commission and as the Petitioners were appointed in the pay scale of Rs.1640-2900 and their pay scales were not revised after their appointment and before accepting the offer, the Petitioners herein would also have to be fixed in the pay scale of Rs.5500-9000. Apart from that, the Respondents themselves in respect of cadre of Senior Assistants in the Secretariat in the case of direct recruits, similarly situated so understood the Order and revised the salary of direct recruits based on

the pay scale given to them at the time of direct recruitment. The two cases are similar. The Respondents in respect of the Petitioners must apply the same principle. Otherwise the action would be arbitrary and or discriminatory. The Petition is, therefore, liable to succeed.

5. It is sought to be contended on behalf of the Respondents that the Respondents are seeking to reconsider the pay scales. We would not like to comment on the same. It will be open to the Respondents to take steps which they are entitled to in law.

Rule made absolute in terms of prayer clause (a). There shall be no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS,J.

RD.